

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of the finality of the Office Action dated June 3, 2003. The Office Action is a first Office Action after the filing of a request for continued examination (RCE) on May 6, 2002 with a certificate of mailing dated April 26, 2002 (A notice of abandonment issued on December 16, 2002 and was subsequently withdrawn on May 7, 2003 in response to a petition to withdraw the holding of abandonment). The RCE was filed with instructions to consider the amendment filed on March 26, 2002, which was not entered as raising new issues (see Advisory Action mailed April 17, 2002. MPEP §706.07(h) states "it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised."

Since the present application contains material which was presented in the earlier application after final rejection but was denied entry because new issues were raised that require further consideration and/or search, and since the Office Action dated June 3, 2003 is a first Office Action in the RCE, it is respectfully submitted that the finality of the Office Action is not proper and it is respectfully requested that the finality thereof be withdrawn.

The Office Action mailed June 3, 2003 has been carefully reviewed and considered. Claim 1 is amended. Claims 2 and 3 are canceled. Reconsideration of the application in view of the above amendments and following remarks is respectfully requested.

Claims 1 and 4-7 stand rejected under 35 U.S.C. §103 as unpatentable over U.S. Patent No. 5,694,968 (Devall).

Claims 1 and 4-7 stand rejected under 35 U.S.C. §103 as unpatentable over Devall in view of AT 003 803 (Zeigler), FR 2 262 609 (FR '609) and WO 95/03949 (Nemser).

Claims 2-3 stand rejected under 35 U.S.C. §103 as unpatentable over Devall in view of Zeigler, FR '609, and Nemser and further in view of U.S. Patent No. 5,085,773 (Danowski).

The limitations of claim 2 have been included in independent claim 1. Accordingly, independent claim 1 now recites an antisurge element comprising a porous sintered part that "prevents sloshed fuel in the fuel tank which splashes against said antisurge element" from flowing through the antisurge element.

Devall discloses a thin plate 64 with holes which fails to prevent fuel from flowing through.

Zeigler discloses a device similar to Devall with a porous body 17 which allows fuel to flow therethrough into chamber 7. This is pointed out on page 6, paragraph 2, lines 5-7 of '803. Although the material of Zeigler is a porous material, Zeigler fails to teach the flow preventing characteristics of independent claim 1.

Nemser discloses a membrane for organic vapors, i.e., not liquid fuel (see page 4, lines 3-11). A special cell A is required for mounting the membrane. Furthermore, the specific example IX on page 21 of Nemser discloses that the membrane is 0.033 mm thick which is not sufficient for stopping sloshing fuel.

Finally FR '609 discloses a plug 23 and does not provide a detailed disclosure of the plug. There seems to be a membrane 14 above the plug which seems to indicate that the plug 23 does not prevent fuel from flowing through. As stated in the Office Action, none of the above references teach or suggest a porous sintered part for preventing the flow of sloshing fuel therethrough, as recited in independent claim 1.

Danowski fails to teach what Devall, Zeigler, FR '609, and Nemser lack. Danowski discloses a fuel filter which is arranged serially in a fuel line and is therefore design to allow fuel to flow therethrough. Although the filter disks in the fuel filter disclosed by Danowski are sintered, Danowski fails to disclose the use of a sintered porous part as an antisurge element for preventing the flow of sloshed fuel therethrough. Accordingly, those skilled in the art would not combine the filter disks of Danowski with an antisurge element for preventing the flow of sloshed fuel. Furthermore, even if the teachings of Danowski were combined with Devall, Zeigler, FR '609, and Nemser, the combination still fails to teach or suggest the use of a porous sintered part to prevent the throughflow of sloshed fuel. In contrast, the sintered part of Dankowski is designed to allow the flow of fuel therethrough. In view of the above amendments and remarks, it is respectfully submitted that independent claim 1 is allowable over Devall, Zeigler, FR '609, and Nemser in view of Dankowski.

Dependent claims 4-7, being dependent on independent claim 1, are allowable for at least the same reasons as independent claim 1.

The application is now deemed to be in condition for allowance and early notice to that effect is solicited.

In general, Applicant would like to note that the Board of Appeals has indicated that an Examiner is required to provide translations of foreign language documents, when the text of such documents is used to reject claims. The Office Action seems to merely refer to reference characters in the drawings, which do not by themselves teach or suggest the claimed invention, as described above. However, if the Examiner is relying on the text of these documents, Applicant respectfully requests translations thereof.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

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